

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**SAMUEL FITZPATRICK,**

**Plaintiff,**

**v.**

**Case No. 08-C-533**

**DR. GREBNER,**

**Defendant,**

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**ORDER**

Plaintiff, who is proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Pursuant to the Prison Litigation Reform Act (PLRA), plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See 28 U.S.C. § 1915(b)(1).

By order dated June 26, 2008, plaintiff was ordered to forward to the clerk of court within 21 days (by July 17, 2008) the sum of \$5.07 as an initial partial filing fee in this action. Plaintiff was advised that, upon payment of this fee, the court would determine whether the action can proceed in forma pauperis. To date plaintiff has not paid this partial filing fee. From this failure to pay the initial filing fee this court infers that plaintiff no longer wants to prosecute this action. Therefore, the court will dismiss this case without prejudice.

**NOW, THEREFORE, IT IS ORDERED** that this action be and hereby is dismissed without prejudice for failure to prosecute.

**IT IS FURTHER ORDERED** that this dismissal will not be counted as a "strike" under 28 U.S.C. § 1915(g).

**IT IS ALSO ORDERED** that copies of this order be sent to the Milwaukee County Sheriff and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin, this 31 day of July, 2008.

/s\_\_\_\_\_  
LYNN ADELMAN  
District Judge